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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,165	04/16/2004	Jiro Kanie	889_001	8549
25191	7590	01/26/2006	EXAMINER	
BURR & BROWN PO BOX 7068 SYRACUSE, NY 13261-7068			YOUNG, MICAH PAUL	
			ART UNIT	PAPER NUMBER
			1618	

DATE MAILED: 01/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/826,165

Applicant(s)

KANIE, JIRO

Examiner

Micah-Paul Young

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Acknowledgement of Papers Received; Request for Continued Examination dated 11/01/05.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459

(1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

1. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined disclosures of Ying et al (*Molded Rice Pudding with Chestnuts* recipe entry; *The New Good Housekeeping Cookbook*; 1986, pg. 542), Carlsson et al (USPN 5,716,639 hereafter '639) and Kabushiki et al (*Total Parenteral Nutritional and Enteral Nutrition*, page 283-307, Suppl. 5, *Nippon Rinsho*, vol. 59, no. 782). The claims are drawn to an enteral nutrient product and a method of production. The method comprises mixing the nutrient liquid and semi-solidifying agent in a holder other than the container and heat-treating the mixture.

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2. The recipe calls for 3 whole eggs (semi-solidifying agent) to be mixed with 3 cups of milk (nutrient liquid) and other ingredients (step 2). The mixture is blended and added to another milk mixture and cooked in a saucepan (step 2). The combination is whipped and homogenized, then cooled (step 4). The product is an excellent source of calcium (nutritional information). The recipe however does not include agar as a thickening agent.
3. The '639 patent teaches a lipophilic carrier preparation comprising agar and other nutrients in order to make cosmetic or food emulsions (abstracts). The aqueous solution used to make the emulsion of the invention comprises thickeners such as agar (col. 4, lin. 34-40). The formulation can be delivered orally, enteral or by any other means well known in the art (col. 5, lin. 8-11, lin. 25-32). The patent establishes the knowledge in the art of using agar as a thickening agent, in enteral emulsions.
4. The Kabushiki reference discloses an enteral feeding method for gastric catheterization and duodenum catheterization. The device administers thick fluid diets using tubing with diameters larger than 4 mm (diagram). The reference however does not disclose heat-treatment of the nutrient composition. A skilled artisan would be motivated to use the tubing of this device in order to deliver the nutritional product since the tube would be wide enough to support and allow even flow of thicker fluid diets.
5. With these things in mind it would have been obvious to include agar of the '639 into the recipe of Ying in order to improve the thickness of the pudding. It is prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose. The idea of combining them flows logically from their having been individually taught in the prior art. *See In*

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re Kerkhoven, 626 F.2d 846, 850, 205 USPQ 1069, 1072 (CCPA 1980). It would have been obvious to combine the emulsions with the feeding tube of the Kabushiki reference in order to deliver the enteral formulation directly to the intestine. It would have been obvious to combine the teachings and suggestions of the art with an expected result of an enteral formulation and delivery method for thicker nutritional emulsion.

Response to Arguments

6. Applicant's arguments with respect to claims 1-6 have been considered but are moot in view of the new ground(s) of rejection. However, regarding the Ying recipe and the Kabushiki article the Examiner maintains that these references obviate the claims. The recipe of Ying comprises each of the elements of the claimed composition, specifically a nutritional liquid and a semi-solidifying agent. No values are ever given for the viscosity of the composition or concentrations of the constituents. Only that the resulting composition be self-sustaining. To any ordinary artisan familiar with rice pudding (comprising whole eggs and milk), it is evident that rice pudding, prepared as taught would sit-up and cling to itself being self sustaining and forming to the shape of its' container. Regarding the Kabushiki reference, the article is relied upon for its' teaching of a thicker feeding tube for enteral compositions. It is well known that enteral formulations are thick emulsion that must be delivered via feeding tube. This reference provides the feeding tube.


Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Micah-Paul Young whose telephone number is 571-272-0608. The examiner can normally be reached on M-F 7:00-4:30 every other Monday off.

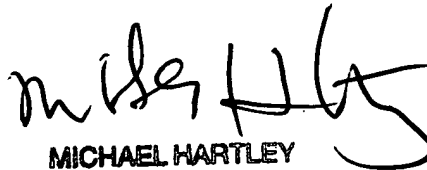
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on 571-272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


MP Young

Micah-Paul Young
Examiner
Art Unit 1618


MICHAEL HARTLEY
PRIMARY EXAMINER